IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Crl.Rev.Pet.No. 3291 of 2007()

CRA.146/2007 of ADDL. SESSIONS COURT (ADHOC)-II, ALAPPUZHA
CC.31/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II(MOBILE),ALAPPUZHA

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REVN. PETITIONER: APPELLANTS/ACCUSED 1 AND 2

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1. KAITHATHIL KSHETHRA YOGAM,
   REPRESENTED BY ITS PRESIDENT, SUDHAKARAN.

2. SUDHAKARAN, PRESIDENT,
   KAITHATHIL KSHETHRAYOGAM, SREE KARTHIKA,
   SOUTH AYRAD, AVALOOKUNNU P.O.,
   ALAPPUZHA.

BY ADV. SRI.G.PRIYADARSAN THAMPI

RESPONDENTS: RESPONDENT/COMPLAINANT AND STATE

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1. SURESH JOSEPH,
   S/O.JOSEPH, AGED ABOUT 38 YEARS,
   MANGATTU HOUSE, THATHAMPALLY,
   ALAPPUZHA.

2. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 17/09/2007, ALONG WITH CRRP.3350 AND 3351/07 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. Nos. 3291 of 2007, 3250 of 2007 and 3351 of 2007

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Dated: 17-09-2007

O R D E R

The revision petitioners in Crl. R.P. 3291 of 2007 are a partnership firm and its President who are respectively A1 and A2 in C.C. No. 31 of 2007 on the file of the J.F.C.M.-II, Alappuzha . The revision petitioners in Crl. R.P. 3351 of 2007 and 3350 of 2007 are respectively the accused Nos. 3 and 4 who are respectively Secretary and Treasurer of the Ist accused firm. It was a prosecution under Sec. 138 of the Negotiable Instruments Act, 1881.

2. What has been proved in the case is that on 24-4-1997 the 3rd accused who was the Secretary of the first accused firm borrowed on behalf of the first accused firm a sum of Rs. 50,000/- and executed Ext.P1 promissory note in favour of the complainant. Subsequently, when the amount was demanded Ext.P3 cheque for the said amount was issued on 15-6-1998 and the said cheque was signed by accused Nos. 2 to 4 on behalf of the first accued partnership firm. The cheque was drawn on the Aryad Panchayath Service Co-operative Bank. On presentation of the cheque for encashment on 27-3-1998 through the Alappuzha Branch of the Lord Krishna Bank, the same was dishonoured due to insufficiency of funds. Even after sending statutory notice to the accused the amount was not paid. Hence

the complaint.

3. The learned counsel appearing for the Revision Petitioners re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by accused Nos. 2 to 4 in favour of the complainant on the drawee bank, that when the cheque was validly presented to the bank, it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioners/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioners.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioners. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioners. Accordingly, if the revision petitioners pay to the first respondent complainant by way of compensation under Sec. 357 (3) Cr.P.C. a sum of Rs. 50,000/- **(Rupees fifty**

thousand only) within **three months** from today, then A2 to A4 need to undergo only imprisonment till the rising of the court. If the revision petitioners commit default in making the payment as aforesaid, A2 to A4 shall undergo simple imprisonment for three months by way of default sentence.

These Revisions are disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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